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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

STERIL-AIRE, INC., a Nevada corporation

Plaintiffs,

vs.

FIRST LIGHT TECHNOLOGIES, INC., a Vermont corporation; and UV RESOURCES, LLC, a California corporation; and FORREST B. FENCL, a California individual,

Defendants.

FIRST LIGHT TECHNOLOGIES, INC., a Vermont corporation,

Counterclaimant,

vs.

STERIL-AIRE, INC., a Nevada corporation,

Counter-Defendant.

Case No. SACV08-00682 AHS (ANx)

**ORDER RE EVIDENTIARY
OBJECTIONS TO DECLARATION
OF ROGER D. MCWILLIAMS**

DATE: July 27, 2009

TIME: 10:00 a.m.

CTRM: 10A

Hon. Alicemarie H. Stotler

<u>Objection:</u>	<u>Ruling:</u>
<p>2 Dr. McWilliams' expert report 3 should be disregarded. It does not 4 assist the Court in deciding any factual 5 matter before the Court.</p>	<p><input type="checkbox"/> Sustained <input type="checkbox"/> Sustained as follows: <hr/> <hr/> <hr/> <hr/> </p>
<p>6 Expert testimony is admissible 7 only if it will assist the trier of fact to 8 understand the evidence or to determine 9 a fact in issue. Fed. Rule Evid. (F.R.E.) 10 702. In the summary judgment context, 11 a district court need not consider expert 12 testimony that is not reliable or not 13 helpful to resolving the issues raised on 14 summary judgment. <i>Stilwell v. Smith &</i> 15 <i>Nephew, Inc.</i>, 482 F.3d 1187, 1192 (9th 16 Cir. 2007). "Expert testimony which 17 does not relate to any issue in the case 18 is not relevant, and ergo, non-helpful." 19 <i>Id.</i> (internal quotations omitted).</p>	<p>X Overruled</p>
<p>20 Dr. McWilliams' expert report 21 purports to set forth his analysis of 22 spectral characteristics of tested light 23 bulbs. This analysis has no relevance 24 to any issue currently before the Court 25 and should therefore be disregarded. 26 F.R.E. 401-403; <i>Stilwell</i>, 482 F.3d at 27 1192.</p>	

1 In addition, Dr. McWilliams
2 cannot properly authenticate the
3 samples he tested. Dr. McWilliams
4 does not have personal knowledge
5 regarding who manufactured the
6 samples he tested and neither Plaintiff
7 and Counterdefendant Steril-Aire, Inc.
8 (“S-A”) nor Dr. McWilliams provided
9 any documentation that would establish
10 a chain of custody for the samples
11 tested. Dr. McWilliams’ testimony
12 should therefore be excluded under
13 Federal Rule of Evidence 702 and
14 *Daubert*, which require expert
15 testimony to be based on sufficient
16 facts or data, the product of reliable
17 principles and methods, and applied
18 reliably to the facts of
19 the case. Fed. R. Evid. 702; *Daubert v.*
20 *Merrell Dow Pharm., Inc.*, 509 U.S.
21 579 (1993).

22

23 IT IS SO ORDERED.

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25 DATED: August 11, 2009.

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ALICEMARIE H. STOTLER

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Hon. Alicemarie H. Stotler
U.S. District Court Judge

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